

1 **31A-22-409. Standard Nonforfeiture Law for Individual Deferred Annuities.**

2 (1) This section is known as the "Standard Nonforfeiture Law for Individual Deferred
3 Annuities."

4 (2) This section does not apply to:

5 (a) any reinsurance;

6 **(b)** group annuity purchased under a retirement plan or plan of deferred compensation
7 established or maintained by an employer, including a partnership or sole proprietorship,
8 or by an employee organization, or by both, other than a plan providing individual
9 retirement accounts or individual retirement annuities under Section 408, Internal
10 Revenue Code;

11 **(bc)** a premium deposit fund;

12 **(ed)** a variable annuity;

13 **(de)** an investment annuity;

14 **(ef)** an immediate annuity;

15 **(fg)** a deferred annuity contract after annuity payments have commenced; or

16 **(gh)** a reversionary annuity; or

17 **(hi)** any contract that shall be delivered outside this state through an agent or other
18 representative of the company issuing the contract.

19 (3) (a) If a policy is issued after this section takes effect as set forth in Subsection
20 ~~(4215)~~, a contract of annuity, except as stated in Subsection (2), may not be delivered or
21 issued for delivery in this state unless the contract of annuity contains in substance:

22 (i) the provisions described in Subsection (3)(b); or

23 (ii) provisions corresponding to the provisions described in Subsection (3)(b) that in
24 the opinion of the commissioner are at least as favorable to the contractholder, governing
25 cessation of payment of consideration under the contract.

26 (b) Subsection (3)(a)(i) requires the following provisions:

27 (i) upon cessation of payment of consideration under a contract, or upon a written
28 request of the contract owner, the company ~~will~~ shall grant a paid-up annuity benefit on a
29 plan stipulated in the contract of such a value as specified in Subsections ~~(57)~~, ~~(68)~~, ~~(79)~~,
30 ~~(810)~~, and ~~(4012)~~;

31 (ii) if a contract provides for a lump-sum settlement at maturity, or at any other time,
32 upon surrender of the contract at or before the commencement of any annuity payments,
33 the company ~~will~~ shall pay in lieu of any paid-up annuity benefit a cash surrender benefit
34 of such amount as is specified in Subsections ~~(57)~~, ~~(68)~~, ~~(810)~~, and ~~(4012)~~;

35 ~~—(iii) the~~ The company shall may reserve the right to defer the payment of the cash
36 surrender benefit ~~under Subsection (3)(b)(ii)~~ for a period of not to exceed six months
37 after demand for the payment of the cash surrender benefit with surrender of the contract;

38 ~~(iviii)~~ a statement of the mortality table, if any, and interest rates used in calculating
39 any of the following that are guaranteed under the contract:

40 (A) minimum paid-up annuity benefits;

41 (B) cash surrender benefits; or

42 (C) death benefits;

43 ~~(vii)~~ sufficient information to determine the amounts of the benefits described in
44 Subsection (3)(b)~~(iviii)~~;

45 ~~(viiv)~~ a statement that any paid-up annuity, cash surrender, or death benefits that may
46 be available under the contract are not less than the minimum benefits required by any

statute of the state in which the contract is delivered; and
 (vii) an explanation of the manner in which the benefits described in Subsection
 (3)(b)(vii) are altered by the existence of any:
 (A) additional amounts credited by the company to the contract;
 (B) indebtedness to the company on the contract; or
 (C) prior withdrawals from or partial surrender of the contract.
 (c) Notwithstanding the requirements of this Subsection (3), any deferred annuity
 contract may provide that if no consideration has been received under a contract for a
 period of two full years and the portion of the paid-up annuity benefit at maturity on the
 plan stipulated in the contract arising from consideration paid before the period would be
 less than \$20 monthly:
 (i) the company may at the company's option terminate the contract by payment in
 cash of the then present value of such portion of the paid-up annuity benefit, calculated
 on the basis of the mortality table specified in the contract, if any, and the interest rate
 specified in the contract for determining the paid-up annuity benefit; and
 (ii) the payment described in Subsection (3)(c)(i), relieves the company of any further
 obligation under the contract.
 (4) For policies issued prior to June 1, 2006, the The minimum values as specified in
 Subsections (~~57~~), (~~68~~), (~~79~~), (~~810~~), and (~~1012~~) of any paid-up annuity, cash surrender, or
 death benefits available under an annuity contract shall be based upon minimum
 nonforfeiture amounts as established in this section.
 (a) (i) With respect to contracts providing for flexible considerations, the minimum
 nonforfeiture amount at any time at or before the commencement of any annuity
 payments shall be equal to an accumulation up to such time, at a rate of interest of 3% per
 annum of percentages of the net considerations paid prior to such time:
 (A) decreased by the sum of:
 (I) any prior withdrawals from or partial surrenders of the contract accumulated at a
 rate of interest of 3% per annum; and
 (II) the amount of any indebtedness to the company on the contract, including interest
 due and accrued; and
 (B) increased by any existing additional amounts credited by the company to the
 contract.
 (ii) For purposes of this Subsection (4)(a), the net consideration for a given contract
 year used to define the minimum nonforfeiture amount shall be:
 (A) an amount not less than zero; and
 (B) equal to the corresponding gross considerations credited to the contract during that
 contract year less:
 (I) an annual contract charge of \$30; and
 (II) a collection charge of \$1.25 per consideration credited to the contract during that
 contract year.
 (iii) The percentages of net considerations shall be:
 (A) 65% of the net consideration for the first contract year; and
 (B) 87-1/2% of the net considerations for the second and later contract years.
 (iv) Notwithstanding Subsection (4)(a)(iii), the percentage shall be 65% of the portion
 of the total net consideration for any renewal contract year that exceeds by not more than
 two times the sum of those portions of the net considerations in all prior contract years

for which the percentage was 65%.

(b) (i) Except as provided in Subsections (4)(b)(ii) and (iii), with respect to contracts providing for fixed scheduled consideration, minimum nonforfeiture amounts shall be:

(A) calculated on the assumption that considerations are paid annually in advance; and

(B) defined as for contracts with flexible considerations that are paid annually.

(ii) The portion of the net consideration for the first contract year to be accumulated shall be equal to an amount that is the sum of:

(A) 65% of the net consideration for the first contract year; and

(B) 22-1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for:

(I) the second contract year; and

(II) the third contract year.

(iii) The annual contract charge shall be the lesser of \$30 or 10% of the gross annual consideration.

(c) With respect to contracts providing for a single consideration payment, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that:

(i) the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90%; and

(ii) the net consideration shall be the gross consideration less a contract charge of \$75.

(5) For policies issued on or after June 1, 2006, the minimum values as specified in Subsections (7), (8), (9), (10), and (12) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as established in this section.

(a) The minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to such time, at rates of interest as indicated in Subsection (5)(b), of 87-1/2% of the gross considerations paid prior to such time decreased by the sum of:

(i) any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in Subsection (5)(b);

(ii) an annual contract charge of \$50, accumulated at rates of interest as indicated in Subsection (5)(b);

(iii) any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in Subsection (5)(b); and

(iv) the amount of any indebtedness to the company on the contract, including interest due and accrued.

(b) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of 3% per annum and the following, that shall be specified in the contract if the interest rate will be reset:

(i) the five-year Constant Maturity Treasury Rate reported by the Federal Reserve, rounded to the nearest 1/20th of 1%, as of a date or average over a period, specified in the contract, no longer than 15 months prior to the contract issue date or redetermination date under Subsection (5)(b)(iv);

(ii) reduced by 125 basis points;

(iii) where the resulting interest rate is not less than 1%; and

138 (iv) the interest rate shall apply for an initial period and may be redetermined for
139 additional periods. The redetermination date, basis and period, if any, shall be stated in
140 the contract. The basis is the date or average over a specified period that produces the
141 value of the five-year Constant Maturity Treasury Rate to be used at each redetermination
142 date.

143 (c) During the period or term that a contract provides substantive participation in an
144 equity indexed benefit, the reduction described in Subsection (5)(b)(ii) above may be
145 increased by up to an additional 100 basis points to reflect the value of the equity index
146 benefit. The present value at the contract issue date, and at each redetermination date
147 thereafter, of the additional reduction shall not exceed the market value of the benefit.
148 The commissioner may require a demonstration that the present value of the additional
149 reduction does not exceed the market value of the benefit. Lacking such a demonstration
150 that is acceptable to the commissioner, the commissioner may disallow or limit the
151 additional reduction.

152 (d) The commissioner may adopt rules to implement the provisions of Subsection
153 (5)(c) and to provide for further adjustments to the calculation of minimum nonforfeiture
154 amounts for contracts that provide substantive participation in an equity index benefit and
155 for other contracts that the commissioner determines adjustments are justified.

156 (6) Notwithstanding Subsection (4), for policies issued on or after June 1, 2004 and
157 prior to June 1, 2006, at the election of a company, on a contract form-by-contract form
158 basis, the minimum values as specified in Subsections (7), (8), (9), (10), and (12) of any
159 paid-up annuity, cash surrender, or death benefits available under an annuity contract
160 may be based upon minimum nonforfeiture amounts as established in Subsection (5).

161 (57) (a) Any paid-up annuity benefit available under a contract shall be such that the
162 contract's present value on the date annuity payments are to commence is at least equal to
163 the minimum nonforfeiture amount on that date.

164 (b) The present value described in Subsection (57)(a) shall be computed using the
165 mortality table, if any, and the interest rate specified in the contract for determining the
166 minimum paid-up annuity benefits guaranteed in the contract.

167 (68) (a) For contracts that provide cash surrender benefits, the cash surrender benefits
168 available before maturity may not be less than the present value as of the date of
169 surrender of that portion of the cash surrender value that would be provided under the
170 contract at maturity arising from considerations paid before the time of cash surrender
171 reduced by the amount appropriate to reflect any prior withdrawals from or partial
172 surrender of the contract, the present value being calculated on the basis of an interest
173 rate not more than 1% higher than the interest rate specified in the contract for
174 accumulating the net considerations to determine the maturity value, decreased by the
175 amount of any indebtedness to the company on the contract, including interest due and
176 accrued, and increased by any existing additional amounts credited by the company to the
177 contract.

178 (b) In no event shall any cash surrender benefit be less than the minimum
179 nonforfeiture amount at that time.

180 (c) The death benefit under these contracts shall be at least equal to the cash surrender
181 benefit.

182 (79) (a) For contracts that do not provide cash surrender benefits, the present value of
183 any paid-up annuity benefit available as a nonforfeiture option at any time prior to

maturity may not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid before the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, this present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine maturity value, and increased by any existing additional amounts credited by the company to the contract.

(b) For contracts that do not provide any death benefits before commencement of any annuity payments, the present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit.

(c) In no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

~~(810)~~ (a) For the purpose of determining the benefits calculated under Subsections ~~(68)~~ and ~~(79)~~, the maturity date shall be considered to be the latest date permitted by the contract, except that it may not be considered to be later than the later of:

(i) the anniversary of the contract next following the annuitant's 70th birthday; or

(ii) the tenth anniversary of the contract.

(b) For a contract that provides cash surrender benefits on or past the maturity date, the cash surrender value shall be equal to the amount used to determine the annuity benefit payments.

(c) A surrender charge may not be imposed on or past maturity.

~~(911)~~ Any contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount before the commencement of any annuity payments shall include a statement in a prominent place in the contract that these benefits are not provided.

~~(4012)~~ Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

~~(4113)~~ (a) For any contract that provides, within the same contract by rider or supplemental contract provisions, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall:

(i) be equal to the sum of:

(A) the minimum nonforfeiture benefits for the annuity portion; and

(B) the minimum nonforfeiture benefits, if any, for the life insurance portion; and

(ii) computed as if each portion were a separate contract.

(b) (i) Notwithstanding Subsections ~~(57)~~, ~~(68)~~, ~~(79)~~, ~~(810)~~, and ~~(4012)~~, additional benefits payable, as described in Subsection ~~(4113)~~(b)(ii), and consideration for the additional benefits payable, shall be disregarded in ascertaining, if required by this section:

(A) the minimum nonforfeiture amounts;

(B) paid-up annuity;

(C) cash surrender; and

230 (D) death benefits.

231 (ii) For purposes of this Subsection (~~44~~13), an additional benefit is a benefit payable:

232 (A) in the event of total and permanent disability;

233 (B) as reversionary annuity or deferred reversionary annuity benefits; or

234 (C) as other policy benefits additional to life insurance, endowment, and annuity

235 benefits.

236 (iii) The inclusion of the additional benefits described in this Subsection (~~44~~13) may

237 not be required in any paid-up benefits, unless the additional benefits separately would

238 require:

239 (A) minimum nonforfeiture amounts;

240 (B) paid-up annuity;

241 (C) cash surrender; and

242 (D) death benefits.

243 (14) The commissioner may adopt rules:

244 (a) implementing provisions of this nonforfeiture law; and

245 (b) interpreting, describing and clarifying the application of this nonforfeiture law to

246 any form of annuity for which the interpretation, description, or clarification is deemed

247 necessary by the commissioner, including unusual and new forms of annuities.

248 (~~42~~15) (a) After this section takes effect, any company may file with the

249 commissioner a written notice of its election to comply with this section after a specified

250 date before July 1, 1988.

251 (b) This section applies to annuity contracts of a company issued on or after the date

252 the company specifies in the notice.

253 (c) If a company makes no election under Subsection (~~42~~15)(a), the operative date of

254 this section for such company is July 1, 1988.